

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2015-091-01161C

Parcel No. 48-617-00-0015

ATA, LC

Appellant,

v.

Warren County Board of Review,

Appellee.

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**Introduction**

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 12, 2016. Attorney Ken Smith represented ATA, LC. County Assessor Brian Arnold represented the Warren County Board of Review.

ATA is the owner of commercial strip mall located at 1705/1709 N Jefferson Avenue, Indianola. The property, built in 2004, is 20,342 square feet with ten suites ranging from 624 square feet to just over 5300 square feet. Three suites are vacant, and two of the vacant suites are shell spaces that have never been finished or occupied. (Ex. B, p. 28). Other site improvements include 50,800 square feet of concrete paving and yard lighting. The site is 3.340 acres.

The property's January 1, 2015, assessment was \$1,709,200, allocated as \$436,500 in land value and \$1,272,700 in improvement value. ATA protested to the Board of Review and claimed the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). The Board of Review modified the assessment to \$1,614,000.

ATA then appealed to PAAB. It asserts the subject property's assessment should be \$1,200,000.

## **Findings of Fact**

Troy Knight, ATA's owner, testified about the property's history during his ownership including its tenancy and repairs made to the improvements.

Knight explained that when he purchased the property, there were issues with the property's foundation and the concrete parking lot. Knight indicated an off-site storm sewer to the west of the subject property is thought to be the potential cause of on-going settlement issues. Knight testified that water erosion was occurring on both sides of the road and the Department of Transportation (DOT) remediated the east side of the highway and replaced the parking lot for Circle B Cashway, which was having the same issues. Knight testified that while he has contacted the DOT on numerous occasions, he did not want to get an attorney involved. He believes his decision to not involve an attorney is why the DOT has not assisted in remediating his issues.

To date, Knight explained he has spent over \$40,000 to remediate issues in portions of the parking lot. (Ex. 8, pp. 6-7). He also has an estimate of \$385,700 to remove and replace the entirety of the parking lot, but has not invested in that extreme measure. (Ex. 8, p. 5).

Knight testified the subject property was 37% occupied when he purchased it in 2009. As of the 2015 assessment, the property was roughly 70% occupied, with two vacant suites (600 and 200) and a partial tenant in another suite. When questioned about what marketing strategies he has employed to lease the space, Knight explained he has never used a real estate agent to list the suites for lease. Instead, he relies on flyers posted on the doors of the available suites; and he communicates with Warren County Economic Development Corporation and Chamber of Commerce.

Knight also confirmed the costs of build-outs to different suites that occurred in 2010 and 2015; these costs were documented by building permits. (Ex. A). Depending on the scope of the project and the amount of square feet being remodeled, the permits indicated a range of cost between roughly \$3.00 per-square-foot to \$16.50 per-square-foot. The upper end of this range was for the complete build out of a vacant suite. The permit reflects the finish of the 2674 square-foot suite as a physical therapy center. (Ex. A, p. 3).

Despite ATA's assertions the subject property suffers from disrepair and has some vacancy, it did not provide any evidence of how these concerns affect the market value.

ATA attained ownership of the subject property in September 2012, for \$1,010,000. The transfer to ATA was from T&C Knight, LLC, a related party. T&C Knight previously purchased the property from the Bank of the West in October 2009 for \$990,000, which was subsequent to a foreclosure. None of these transactions are considered normal for assessment purposes.

ATA asserts that comparing the subject property's purchase price and current assessment as well as the increase in the assessment since 2011 shows the current assessment is not reasonable. First, as previously noted, the 2009 purchase price was not a normal transaction, and therefore any comparisons ATA makes to it are not reliable.

To support its position that the increase in assessment since 2011 is unreasonable, it submitted a history of the assessment since 2008, summarized in the following chart. (Ex. 8, p. 1).

Assessment Year	Lot 1	Lot 2	Total	% Change from Previous Year
2008	\$1,050,680	\$ 8,800	\$1,059,480	N/A
2009	\$ 862,780	\$ 8,300	\$ 871,080	-17.78%
2010	\$1,125,100	\$ 8,300	\$1,133,400	+30.11%
2011	\$1,284,900	\$125,500	\$1,410,400	+24.44%
2012	\$ 974,500	\$125,500	\$1,100,000	-22.01%
2013	\$1,197,000	N/A	\$1,197,000	+8.82%
2014	\$1,197,000	N/A	\$1,197,000	0.00%
2015	\$1,614,000	N/A	\$1,614,000	+34.84%

When ATA purchased the subject property in 2009, it was assessed as two separate parcels. In 2013, at ATA's request, the two parcels were combined to a single assessment. As such, it is not reasonable to compare the combined assessments from 2008 through 2012 to the 2015 assessment. Moreover, the 2011-2012 assessments

were the result of a stipulation reached on appeal. Based on the foregoing, we do find the assessment history from 2009 to 2012 relevant compared to the 2015 assessment. After the parcels were combined in 2013, the assessment increased slightly from the previous total assessments and remained the same through the 2014 assessment.

ATA also compares its assessment to the assessments of six other properties located on N Jefferson Way. (Ex. 8, p. 1). The following chart summarized the information ATA submitted to support its claim.

Address	2011 Assessment	2015 Assessment	% Change from 2011 to 2015
Subject	\$1,410,400	\$1,614,000	+14.44%
1201 N Jefferson Way	\$ 759,900	\$ 707,200	-6.94%
400 N Jefferson Way	\$ 555,000	\$ 535,000	-3.60%
509 N Jefferson Way	\$2,236,100	\$2,140,900	-4.26%
1001 N Jefferson Way	\$426,100	\$ 401,000	-5.89%
1011 N Jefferson Way	\$1,114,700	\$1,073,500	-3.70%
1214 N Jefferson Way	\$1,148,800	\$1,186,700	+3.30%

ATA offered Exhibit 8 at the hearing; as a result, Assessor Brian Arnold could not confirm that the 2011 and 2015 assessments listed for the properties were correct. Likewise, there was no other information about the properties to determine whether they are actually comparable to the subject property. Regardless of the lack of information in the record, as previously noted the 2011-2012 assessment of the subject property reflects two separately assessed parcels and should not be used for comparison with its current assessment, or in comparison to other singly assessed parcels.

Ultimately, ATA is asserting the assessments of these properties indicate the subject is over assessed. Typically, comparing assessments is akin to asserting an equity claim, which ATA did not raise to the Board of Review; therefore, PAAB is without jurisdiction to consider it. Moreover, we are unable to consider the comparables for a market value claim as ATA did not submit any information that any of these properties has recently sold; or adjust any known sale prices for differences compared to the subject to arrive an opinion of market value. For these reasons, we give the exhibit and its limited analysis no consideration.

Arnold testified it was his belief the 2013-2104 assessment of the subject property was below market value based on other like properties in the Indianola area and the improvements to the property. For these reasons, he commissioned an appraisal by Russ Manternach of Commercial Appraisers of Iowa, Inc., West Des Moines, to determine the 2015 fair market value of the subject property. (Ex. B). Arnold testified that prior to commissioning the appraisal he contacted Knight to make him aware it was occurring and that it would be relied on to set the upcoming 2015 assessment. Arnold additionally explained that when the property was combined to a single assessment parcel, a -25% topography adjustment was made to the land value to reflect the location of a frontage road that limits the utility of the site. The 2015 assessment also reflected the removal of vacancy factors that had been applied in previous assessments but which were no longer applicable. Lastly, all commercial properties in Indianola received a 5% increase from 2014 to 2015. The combination of these factors resulted in the increase in the assessment.

Turning to Manternach's appraisal, Manternach developed all three approaches to value (sales, cost, and income) in arriving at his opinion of a fair market value. Manternach opines the property's value at \$1,620,000, as of January 1, 2015.

ATA was critical of Manternach's appraisal, and submitted a review appraisal (Review) it commissioned. (Ex. 1). Richard Boggess of Birkenholz Appraisal Services, Newton, Iowa, completed the Review. Boggess did not submit an opinion of market value within the Review, although Knight testified that Boggess had stated that in his opinion, the value would be \$1,200,000, which is what he had appraised it for several years prior. Knight also testified that Boggess did not perform an inspection of the subject property, but rather the Review was a desktop analysis only.

Despite not inspecting the subject property, Boggess asserts that Manternach provided a poor description of the location and purports that Manternach's location adjustments are inadequate. Boggess asserts the property is in a "marginal location as evidenced by the fact that 20% [of the subject property] has never been finished since the building was built." (Ex. 1, p. 1). Boggess does not offer any support for his opinion or conclusions on what he believes an appropriate location adjustment would be. While

we recognize vacancy may be influenced by location, there is no evidence that location is playing a role in the continued vacancy of the subject improvements. Moreover, as Arnold noted, it does not appear Boggess has been to the Indianola area recently and is apparently unaware of the significant growth that has been taking place along the Jefferson Way corridor near the subject property.

Boggess also asserts that Manternach underestimates the cost to finish the vacant shell space. Manternach estimated \$20 per-square-foot; whereas Boggess asserts this should be closer to \$56 per-square-foot based solely on a nationwide cost manual, Marshall and Swift. However, as previously noted, building permits were submitted documenting actual recent build-out costs to the subject suites. (Ex. A). The permits varied in overall scope and cost; however, they generally indicate costs were less than \$20 per-square-foot. This local data supports Manternach's conclusions.

Boggess offers additional critique in his Review but we do not find it necessary to recite all of them because he does not provide any support or rational for his opinions. Moreover, we question if Boggess understands ad valorem appraisal requirements as he questions why Manternach valued the subject property as fee simple, rather than leased fee. (Ex. 1, p. 2). In Iowa, ad valorem valuation is based on the fee simple market value. Based on the foregoing, we give the Review no consideration.

The 2015 assessment was originally set at \$1,709,200, which closely mirrors Manternach's cost approach conclusion of \$1,710,000. When the Board of Review reduced the assessment, it appears to have relied on Manternach's final opinion of value of \$1,620,000, which considered all three approaches to value. We note Manternach's appraisal is the best evidence in the record of the fair market value of the subject property, as of January 1, 2015.

## **Conclusions of Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of

Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

ATA purchased the property in 2012 for \$1,010,000; however, this was a corporate merger between related parties. Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value under Iowa law. § 441.21(1)(b). However, “[s]ales prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including . . . foreclosure or other forced sales.” *Id.* Because ATA's purchase of the property was from a related party, and occurred three years prior to the assessment, the subject property's sale price is not a reliable indicator of market value for the 2015 assessment.

ATA submitted evidence of other property assessments in the area that it believes did not have similar increases in assessed values from 2011 to 2015. The subject property was assessed as two separate parcels up until 2012. The two parcels were combined to a single assessment parcel in 2013. Any assessments prior to 2013 are not reasonable comparisons to the 2015 assessment. Moreover, the comparison of assessments is akin to an equity claim, which ATA did not raise.

ATA did not submit any evidence of the 2015 fair market value of the subject property, such as an appraisal, an income analysis, a cost analysis, or the sales of any comparable properties adjusted for differences.

Based on the foregoing, we find ATA has not met its burden of establishing the property is over-assessed by a preponderance of the evidence.

### **Order**

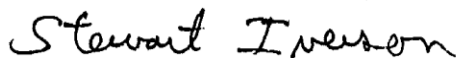
IT IS THEREFORE ORDERED that the Warren County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

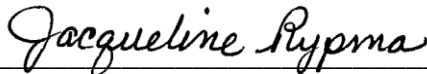
Dated this 22nd day of March, 2016.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:

Ken Smith

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